FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.3696 OF 2005
IN
FIRST APPEAL NO.1498 OF 2005

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.V.Y.Sanglikar for applicant-appellant.

Mr.M.B.Kotak for res.No.1.

CORAM : H.L GOKHALE &
SMT.R.S.DALVI, JJ.
DATED : 29th August 2005

P.C. :

1. Heard Mr.Sanglikar in support of this Civil Application. Mr.Kotak appears for respondent No.1.

2. This Civil Application seeks stay of the Award dated 17th February 2005 passed by the Motor Accidents Claim Tribunal, Mumbai. This is a case where respondent No.1 suffered a very serious accident when he was sandwiched between the lorry and compound wall of a Housing Society. Para-2

of the impugned Award shows serious injuries that respondent No.1 suffered at the age of 20 years. All his 12 ribs were fractured. The bones of his forearm and left leg were fractured. Mondible was fractured and there were multiple abrasion and contusions on his chest and all over body. It is almost a miracle that he has survived. But now also, as certified by doctor, one of his lungs is not functioning.

3. Mr.Sanglikar, learned Counsel appearing for the applicant, has a grievance particularly to the award of Rs.17,28,000/- towards the loss of earning capacity and prospective loss of career. He points out that respondent No.1 is now undertaking studies for the Chartered Accountant Course. That may be so but that is against

great odds.

4. Mr.Kotak, learned Counsel appearing for respondent No.1, has pointed out that parents of respondent No.1 are Bank employees and had to draw from the employer-Banks substantial amounts for which they are required to pay interest. These are all factors which one has got to consider.

5. Mr.Sanglikar has, however, fairly stated that as far as the medical expenses are concerned which are around Rs.8,52,000/-, he does not have any serious objection. The decree is for Rs.38,40,180/- with interest @ 9% per annum. Therefore, by now, the amount must have gone upto Rs.40,00,000/- or so. Inasmuch as there is no serious opposition to the withdrawal of about Rs.8 Lakhs & odd, we permit the 1st respondent to withdraw half the

amount of the remaining decree. We round it upto Rs.25 Lakhs inclusive of the above-referred expenses and permit respondent No.1 to withdraw that amount unconditionally after the same is deposited by the applicant-appellant in the trial Court.

6. As far as the remaining amount is concerned, respondent No.1 may withdraw it by giving a Bank Guarantee of a Nationalised Bank within four weeks. In the event the Bank Guarantee is not so given, the amount will be invested by the trial Court in a Nationalised Bank for a period of 37 months to begin with and the investment will be renewed by 13 months at a time until further orders are received from the trial Court. There will be stay on the impugned Award on the aforesaid terms. The amount be deposited

within two weeks hereafter. The applicant-Insurance Company will deposit the amount within two weeks and as stated above, if the remaining amount other than Rs.25 Lakhs is not withdrawn within four weeks by giving a bank guarantee it is to be invested by the trial Court.

7. Civil Application stands disposed of.

(H.L.GOKHALE, J.)

(SMT.R.S.DALVI, J.)